

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FREDERICK SCOTT ROSWELL,)	CR. NO. 10-00822 LEK
)	
Plaintiff,)	
)	
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

**ORDER TO SHOW CAUSE AND DENYING DEFENDANT'S
MOTION FOR THE RE-APPOINTMENT OF COUNSEL**

On October 17, 2012, pro se Defendant Frederick Scott Roswell ("Defendant") filed his Motion to Set Aside, Vacate, and Correct Sentence pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion"), and his Motion for the Re-appointment of Counsel pursuant to 18 U.S.C. § 3006A ("Motion to Appoint Counsel").

On October 25, 2012, this Court issued an order ("10/25/12 Order") requiring Defendant to amend his § 2255 Motion to comply with Rule 2(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts by November 26, 2012. Also on October 25, 2012, this Court issued an entering order ("10/25/12 EO") requiring Defendant to complete the form entitled "Financial Affidavit in Support of Request for Attorney, Expert or Other Court Services Without Payment of Fee" ("Financial Affidavit"). The 10/25/12 EO stated that Defendant was to file his completed Financial Affidavit by no later than November 26, 2012. The 10/25/12 Order also cautioned Defendant

that, if he did not file the Financial Affidavit by that date, the Motion to Appoint Counsel would be automatically denied without prejudice.

After the November 26, 2012 deadline passed, the Court entered an Order Denying Without Prejudice: 1) Defendant's Motion to Set Aside, Vacate, and Correct Sentence; and 2) Defendant's Motion for the Re-appointment of Counsel, on December 3, 2012 ("12/3/12 Order"). [Dkt. No. 41.] Subsequently, on December 5, 2012, the Court received Defendant's amended Motion to Set Aside, Vacate, and Correct Sentence pursuant to 28 U.S.C. § 2255 ("Amended § 2255 Motion"), and, on December 3, 2012, received an amended Financial Affidavit. Because the Amended § 2255 Motion and Financial Affidavit were signed by Defendant on November 23, 2012, before the November 26, 2012 deadline set forth in the 10/25/12 Order, this Court withdrew the 12/3/12 Order. [Dkt. no. 46.]

Defendant's Amended § 2255 Motion and Motion to Appoint Counsel are now before this Court.

I. Order to Show Cause

In the Amended § 2255 Motion, Defendant raises a claim of ineffective assistance of counsel, and challenges his sentence imposed in CR 10-00822. The Court has reviewed the Amended § 2255 Motion, and this Court cannot conclude that it appears plainly from the face of the Amended § 2255 Motion that Defendant

is not entitled to relief. Further, it appears that the Amended § 2255 Motion is in compliance with the rules governing the form of § 2255 motions. This Court therefore ORDERS, pursuant to Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts ("§ 2255 Rules"), that Plaintiff the United States of America ("the Government") file an answer to the Amended § 2255 Motion on or before **February 11, 2013**. Defendant may file a reply to the answer by no later than **March 11, 2013**.

The Court DIRECTS the Clerk's Office to serve a copy of this order, along with a copy of the Amended § 2255 Motion, on the Office of the United States Attorney for the District of Hawai'i.

II. Appointment of Counsel

As to Defendant's Motion to Appoint Counsel, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. Rather, 18 U.S.C. § 3006A(a)(2)(b) allows the appointment of counsel for a § 2255 motion where: (1) the person is financially eligible for appointment of counsel and (2) the interests of justice require the appointment of counsel. Based on the allegations in Defendant's motions, the Court finds that the interests of justice do not require the appointment of counsel. The Court therefore DENIES Defendant's Motion to Appoint Counsel.

It is so ordered.

DATED AT HONOLULU, HAWAII, January 14, 2013.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

**FREDERICK SCOTT ROSWELL V. USA; CR. NO. 10-00822 LEK-KSC; ORDER
TO SHOW CAUSE AND DENYING DEFENDANT'S MOTION FOR THE RE-
APPOINTMENT OF COUNSEL**